

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	
HUNTAIR, INC.)	
)	
Plaintiff,)	
)	Case No. 07 C 6890
vs.)	
)	Honorable David H. Coar
CLIMATECRAFT, INC.)	
)	
Defendant.)	

**PLAINTIFF HUNTAIR, INC.'S AMENDED PROPOSED TERMS AND CLAIM
ELEMENTS FOR CONSTRUCTION IN THE FORM OF JURY INSTRUCTIONS**

Pursuant to the Court's instructions during the claim construction hearing held on August 19, 2008, Plaintiff hereby submits its amended proposed terms and claim elements for construction in the form of jury instructions.

PROPOSED JURY INSTRUCTION NO. 1

THE ROLE OF THE CLAIMS OF A PATENT

Before you can decide many of the issues in this case, you will need to understand the role of patent “claims.” The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers. The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define how broad or narrow the patent's coverage is. Each claim is effectively treated as if it were a separate patent, and each claim may cover more or less than another claim. Therefore, what a patent covers depends, in turn, on what each of its claims cover.

You will first need to understand what each claim covers in order to decide whether or not the claim is infringed. The law says that it is my role to define the terms of the claims and it is your role to apply my definitions to the issues that you are asked to decide in this case. Therefore, I have determined the meaning of the claims and I will provide to you my definitions of certain claim terms. You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issue that you are deciding, the issue of infringement.

PROPOSED JURY INSTRUCTION NO. 2

CLAIM INTERPRETATION

I will now explain to you the meaning of some of the words of the claims in this case. In doing so, I will explain some of the requirements of the claims. As I have previously instructed you, you must accept my definition of these words in the claims as correct. For any words in the claim for which I have not provided you with a definition, you should apply their plain English

meaning. You should not take my definition of the language of the claims as an indication that I have a view regarding how you should decide the issues that you are being asked to decide.

PROPOSED JURY INSTRUCTION NO. 3

DETERMINING INFRINGEMENT OF A PATENT CLAIM

To find infringement of the claims you must determine that each of the claim elements listed below is present in the ClimateCraft product, either literally, or if it not present, there is a corresponding element in the ClimateCraft product that is not substantially different from the claimed element.

PROPOSED JURY INSTRUCTION NO. 4

THE TERM “FAN ARRAY” OF U.S. PATENT NOS. 7,179,046 AND 7,137,775

The term “fan array” means “multiple fan units arranged in a grid, a spaced pattern, a checkerboard, rows slightly offset, columns slightly offset, or a staggered array configuration.”

PROPOSED JURY INSTRUCTION NO. 5

THE TERM “AIR-HANDLING COMPARTMENT ” OF U.S. PATENT NOS. 7,179,046 AND 7,137,775

The term “air handling compartment” means the inlet plenum, fan section and discharge plenum. The plenum is the chamber through which the air passes on its way in and out of the fans.

PROPOSED JURY INSTRUCTION NO. 6

THE TERM “BACKDRAFT DAMPENER ” OF U.S. PATENT NO. 7,179,046 AND 7,137,775

The term “backdraft dampener” means “apparatus that at least partially blocks airflow through a fan unit when the fan unit is turned off.”

PROPOSED JURY INSTRUCTION NO. 7

THE TERM “A CONTROL SYSTEM FOR OPERATING SAID PLURALITY OF FAN UNITS AT SUBSTANTIALLY PEAK EFFICIENCY BY STRATEGICALLY TURNING ON AND OFF SELECTIVE ONES OF SAID PLURALITY OF FAN UNITS ” OF CLAIM 1 (AND CLAIMS THAT DEPEND FROM CLAIM 1) OF U.S. PATENT NO. 7,179,046

The term “a control system for operating said plurality of fan units at substantially peak efficiency by strategically turning on and off selective ones of said plurality of fan units” means a system for operating the fan units at nearly peak efficiency by strategically turning on and off selective ones of the fan units by using a manual or automatic control. Efficiency, as it is used in the claim, refers to a way of determining how much work a machine or system performs in comparison to the amount of energy supplied. The greater the amount of work performed in relation to the amount of energy supplied, the more efficient the machine or system is. Efficiency is typically expressed as a percentage such that the higher the percentage the more efficient the machine or system. In this case, the measure of efficiency would be a percentage reflecting “the ratio of power delivered by the fans to the electrical power consumed by the fans.” The fan units are operated at speeds achieving nearly peak efficiency by using a manual or automatic control. Although the system will include some automated instrumentation and components that provide information necessary to adjust the speed of the fan units, it is not necessary that this occur without any human intervention.

PROPOSED JURY INSTRUCTION NO. 8

THE TERM “A CONTROL SYSTEM FOR CONTROLLING SAID PLURALITY OF FAN UNITS, SAID CONTROL SYSTEM ALLOWING CONTROL OF THE SPEED OF THE FAN UNITS IN SAID PLURALITY OF FAN UNITS SUCH THAT THEY RUN AT SUBSTANTIALLY PEAK EFFICIENCY ” OF CLAIM 15 (AND CLAIMS THAT DEPEND FROM CLAIM 15) OF U.S. PATENT NO. 7,179,046

The term “a control system for controlling said plurality of fan units, said control system allowing control of the speed of the fan units in said plurality of fan units such that they run at substantially peak efficiency” means a system for operating the fan units at speeds achieving

nearly peak efficiency by using a manual or automatic control. Efficiency is used the same way it is described above with respect to claim 1. The fan units are operated at speeds achieving nearly peak efficiency by using a manual or automatic control. Although the system will include some automated instrumentation and components that provide information necessary to adjust the speed of the fan units, it is not necessary that this occur without any human intervention.

PROPOSED JURY INSTRUCTION NO. 9

THE TERM “ARRAY CONTROLLER FOR CONTROLLING SAID AT LEAST SIX FAN UNITS TO RUN AT SUBSTANTIALLY PEAK EFFICIENCY BY STRATEGICALLY TURNING SELECTIVE ONES OF SAID AT LEAST SIX FAN UNITS ON AND OFF ” OF CLAIM 1 (AND CLAIMS THAT DEPEND FROM CLAIM 1) OF U.S. PATENT NO. 7,137,775

The term “array controller for controlling said at least six fan units to run at substantially peak efficiency by strategically turning selective ones of said at least six fan units on and off” means an automatic system that operates the at least six fan units at nearly peak efficiency by strategically turning on and off selective ones of the fan units. Efficiency is used the same way it is described above with respect to claim 1 of U.S. Patent No. 7,179,046. The fan units are operated at speeds achieving nearly peak efficiency by using an automatic control.

Dated: August 26, 2008

Respectfully submitted,

/s/ Brian C. Bianco

David T. Pritikin

Richard T. McCaulley Jr.

Stephanie P. Koh

Brian C. Bianco

Nicole E. Kopinski

Benedict F. Frey

SIDLEY AUSTIN LLP

One South Dearborn Street

Chicago, IL 60603

Telephone: (312) 853-7000

Facsimile: (312) 853-7036

dpritikin@sidley.com

rmccaulley@sidley.com

skoh@sidley.com

bcbianco@sidley.com

nkopinski@sidley.com

bfrey@sidley.com

Attorneys for Plaintiff Huntair, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2008, I caused a copy of the foregoing document PLAINTIFF HUNTAIR, INC.'S AMENDED PROPOSED TERMS AND CLAIM ELEMENTS FOR CONSTRUCTION IN THE FORM OF JURY INSTRUCTIONS, was served by ECF upon:

Charles C. Kinne
KINNE IP GROUP
1240 Iroquois Avenue
Suite 204
Naperville, IL 60563
Telephone: (630) 904-0940
Facsimile: (888) 887-7158
ckinne@kinnelaw.com

Gary S. Peterson
Robert D. Tomlinson
TOMLINSON & O'CONNELL, P.C.
211 North Robinson Avenue
Suite 450
Two Leadership Square
Oklahoma City, OK 73102
Telephone: (405) 606-3366
Facsimile: (866) 633-6165
gp@garypeterson.com
bobt@tomlinsonoconnell.com

Attorneys for Defendant ClimateCraft, Inc.

/s/ Brian C. Bianco
Attorney for Plaintiff